IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Savaram. Versus Paanchi & ors.

S.B. Criminal Misc. Petition No. 648/2002 against the order dated 17-7-2002 passed by the Sessions Judge, Sirohi, in Criminal Revision No. 5/1999.

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Date of Order: October 16, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Surendra Surana, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. B.S. Rathore, for the non-petitioners No.1 and 2.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 17-7-2002 passed by the Sessions Judge, Sirohi (for short, "the Revisional Court" hereinafter), whereby the Revisional Court set aside the order of the Special Judicial Magistrate (Mobile Court), Sirohi (for short, "the trial Court" hereinafter) declining to set aside the ex-parte order dated 11-4-1997 granting maintenance under Section 125 of the Code to the non-petitioners No.1 and 2 with the condition that the petitioner shall deposit a sum of Rs. 52,500/- towards the amount of maintenance from 1.9.1996 top

30.6.2002 at the rate of Rs.750/- per month and shall also continue to pay the monthly allowance of maintenance @ Rs.500/- in favour of non-petitioner No.1 Smt. Paanchi and @ Rs.250/- in favour of non-petitioner No.2 Meenu, the daughter of the petitioner.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the courts below as also the record of the trial Court.

It is contended by the learned counsel for the petitioner that the condition of depositing the arrears of maintenance imposed by the Revisional Court is onerous and ultimately if the petitioner succeeds then it would be difficult to recover the amount if paid by him to the non-petitioners No.1 and 2; however, he submits that the petitioner undertakes to pay the said amount of arrears if ultimately the non-petitioners succeed in the matter. Learned counsel for the petitioner submits that the petitioner would continue to pay the monthly allowance of maintenance @ Rs.750 (Rs.500/- + Rs.250/-) to the non-petitioners from 1-7-2002 till the petition is finally decided by the trial Court. Learned counsel further submits that the petitioner has been paying the maintenance @ Rs.750/- to the petitioners from 1-7-2002 as directed by this Court vide order dated 17-12-2002 and, therefore, the petitioner would continue to pay the same.

Having regard to the facts and circumstances of the case and the fact that the condition imposed by the Revisional Court directing the petitioner to pay the arrears of maintenance in lump-sum while setting aside the ex-parte order of maintenance, appears to be onerous.

In this view of the matter, the order impugned passed by the Revisional Court, to the extent directing the petitioner to pay a sum of Rs.52,500/- as arrears of maintenance from 1-9-1996 to 30.6.2002 to the non-petitioners, is set aside and it is directed that both the parties shall appear before the trial Court on 20-11-2006 and the trial Court shall decide the proceedings under Section 125 of the Code utmost expeditiously since the matter pertains to the year 2002. The petitioner shall continue to pay a sum of Rs.750/- (Rs.500/- + Rs. 250/-) to the non-petitioners from 1-7-2002. The record of the trial Court be returned forthwith.

With these observations, the criminal miscellaneous petition stands disposed of. The stay petition also stands disposed of.

(H.R. PANWAR), J.

mcs